Obtaining Custody of a Child

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4.1 Temporary Removal and Placement of Child Without Court Order*

Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition. MCR 5.961(A). "Exigent circumstances" are not defined in the applicable court rules or statutes. However, an officer may without court order remove a child from the child's surroundings and take the child into temporary custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered. MCR 5.963(A) and MCL 712A.14(1); MSA 27.3178(598.14)(1). See also *In re Albring*, 160 Mich App 750, 756–57 (1987) (probable-cause determination need not be made prior to temporary removal and placement of child pending investigation and preliminary hearing).

An "officer" is a governmental official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor. MCR 5.903(A)(11). This definition does not include a protective services worker. See MCL 712A.14(1); MSA 27.3178(598.14)(1) (local or state police officer, sheriff or deputy sheriff, or probation officer or county agent may take children into custody without court order). In fact, a protective services worker may be required to seek the assistance of law enforcement officers.*

Pending a preliminary hearing, the child may be placed through a child care institution or licensed child-placing agency, or with the other parent, a guardian, or a custodian (usually a relative). MCL 712A.14(3)(a) and (c); MSA 27.3178(598.14)(3)(a) and (c). The child may not be placed in any secure facility designed to physically restrict the movements or activities of alleged or adjudicated juvenile offenders or to incarcerate adults. MCL 712A.15(4); MSA 27.3178(598.15)(4).

*See Section 16.22 for a discussion of the emergency removal of a child who was either not initially placed outside the home or was returned home from foster care.

*See Section 2.12 for a discussion of the required cooperation between FIA and law enforcement officials. **Note:** Although MCR 5.961(A) and 5.963(A) allow an officer to take custody of a child without a written instruction to do so from the court, the court is often contacted by telephone in these circumstances. Via telephone, the court provides authorization to place the child in "shelter care" and schedules a preliminary hearing. A written complaint (see Forms JC 01 and JC 02) may be completed soon afterward and submitted to the court.

4.2 Obtaining Custody of Child With Court Order

The court may order an officer or other person to immediately take a child into custody when, after presentment to the court of a petition,* a judge or referee has reasonable grounds to believe that conditions or surroundings in which the child is found would endanger the health, safety, or welfare of the child. MCR 5.963(B). While a referee may take the proofs and recommend such an order, a judge must sign Form JC 05 (Order to Take/Place Into Temporary Custody).

The order may include an authorization to enter specified premises to remove the child, and a directive to place the child in protective custody pending preliminary hearing. MCR 5.963(B)(1)–(2).*

4.3 Required Investigation Before Placing a Child With Relatives Pending Preliminary Hearing

When custody is sought pursuant to a court order, the court must inquire of the person presenting the complaint or petition whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing. The court must also inquire whether a central registry clearance has been obtained, and whether a criminal history check has been initiated. MCR 5.963(B).

The Family Independence Agency is required to maintain a statewide electronic registry to carry out the purposes of the Child Protection Law. MCL 722.627(1); MSA 25.248(7)(1). The central registry contains reports filed under the Child Protection Law in which relevant and accurate evidence of abuse or neglect is found. MCL 722.622(b); MSA 25.248(2)(b).*

If the investigation of a report fails to disclose evidence of abuse or neglect, information identifying the subject of the report must be expunged from the central registry. However, if evidence of abuse or neglect exists, the FIA must maintain the information in the central registry until it receives reliable information that the alleged perpetrator of the abuse or neglect is dead. MCL 722.627(7); MSA 25.248(7)(7).* Thus, a prior investigation that produced accurate evidence of abuse or neglect by a family member will be memorialized in the central registry and will prevent placement of the child with that relative.

*See Section 6.8 for a complete discussion of petition requirements.

*See Form JC 05.

*See Section 2.19 for a complete discussion of the statewide electronic registry.

*The provision requiring maintenance of records until the alleged perpetrator's death is effective August 1, 1999. See 1998 PA 485.

4.4 Required Procedures After Child Is in Custody

Whether custody of the child has been obtained with or without a court order, an officer who takes a child into custody must:

- (1) immediately attempt to notify the child's parent of the custody;
- (2) inform the parent of the date, time, and place of the preliminary hearing scheduled by the court;
- (3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instruction as to placement pending preliminary hearing;
- (4) if the court is not open, contact the person designated under MCR 5.934(B)(2) for permission to place or release the child pending preliminary hearing;
- (5) ensure that the petition is prepared and submitted to the court; and
- (6) prepare a custody statement similar to the statement required for the detention of a juvenile as provided in MCR 5.934(A)(4) and submit it to the court or leave it at the placement facility.

MCR 5.963(C)(1)–(6).

The court must designate a judge, referee, or other person who may be contacted by the officer taking a child into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to place the child pending preliminary hearing. MCR 5.934(B)(2).

The "custody statement" filed with the court or left at the placement facility should contain the grounds for and the time and location of the custody, and the names of persons notified and the time of notification, or the reason for failure to notify. See MCR 5.934(A)(4) and 5.963(C)(6).*

*See Form JC 02.

4.5 Time Requirements for Preliminary Hearings

The child and the parent, guardian, or custodian, if they can be located, must be brought immediately before the court for a preliminary hearing. MCR 5.963(C)(3) and MCL 712A.14(2); MSA 27.3178(598.14)(2). If the court is not open, a person designated by the court under MCR 5.934(B)(2) will give instructions on the time, date, and place of the preliminary hearing. MCR 5.963(C)(4) and MCL 712A.14(2); MSA 27.3178(598.14)(2).

See Section 7.5 for a discussion of adjournments of preliminary hearings. The preliminary hearing must commence no later than 24 hours after the child has been taken into court custody, excluding Sundays and holidays, unless adjourned for good cause shown, or the child must be released. MCR 5.965(A).

The court is required, at each stage of a child protective proceeding, to adhere to the time requirements specified in the applicable court rules. MCR 5.923(G).

4.6 Temporary Custody of Child Admitted to Hospital

If a child suspected of being abused or neglected is brought to a hospital for outpatient services or admitted to a hospital and the attending physician determines that releasing the child would endanger the child's health or welfare, the attending physician must notify the person in charge and the Family Independence Agency. The person in charge may keep the child in protective custody until the next regular business day of the court. The court must then:

- F order the child to remain in the hospital;
- F order the child to be placed in custody as required by MCL 712A.14(3)(a)–(c); MSA 27.3178(598.14)(3)(a)–(c),* or
- F order the child to be released to the child's parent, guardian, or custodian.

MCL 722.626(1); MSA 25.248(6)(1).

The child may not be placed in any secure facility designed to physically restrict the movements or activities of alleged or adjudicated juvenile offenders or to incarcerate adults. MCL 712A.15(4); MSA 27.3178(598.15)(4).

In such cases, physicians have a statutory duty to make the necessary examinations and submit a written report to the Family Independence Agency. MCL 722.626(2); MSA 25.248(6)(2). This report must be provided to the Family Independence Agency even without parental consent or release. OAG, 1978, No 5406, p 724 (December 15, 1978). If a report is made by a person other than a physician, or if the physician's report is incomplete, the Family Independence Agency may request a court-ordered medical evaluation of the child.* If the child's health is seriously endangered and a court order cannot be obtained, the Family Independence Agency shall have an evaluation performed without a court order. MCL 722.626(3); MSA 25.248(6)(3).

4.7 Ordering Medical Treatment for the Child

MCL 712A.12; MSA 27.3178(598.12), states that "[a]fter a petition shall have been filed and after such further investigation as the court may direct, in the course of which the court may order the child to be examined by a

*See Section 4.1, above.

*See Section 2.17.

physician, dentist, psychologist or psychiatrist," the court may dismiss the petition or issue a summons to the persons who have custody or control of the child. See also MCR 5.923(B), which allows the court to order an evaluation or examination of a child *or parent*. It is unclear whether these provisions allow the court to order an examination or evaluation prior to authorization of the petition.

MCL 722.124a(1); MSA 25.358(24a)(1), allows the court or an agency to consent to emergency medical or surgical treatment in the absence of parental consent if the child is "placed" outside the home, but "placement" of the child may occur only after a preliminary hearing, and treatment may be required immediately. See MCR 5.903(C)(6) (definition of "placement") and MCR 5.965(C)(1) (court must receive evidence to determine whether to place child). In such cases, a preliminary hearing may be held in the hospital to determine that the child needs protection and that probable cause exists to believe that an offense against the child has been committed. See MCR 5.923(E), which allows a court to use a speaker telephone or similar device to facilitate hearings or protect the parties. A judge (not a referee) may then enter an order for medical or surgical care under MCL 722.124a(1); MSA 25.358(24a)(1).

Note: In the case described above, jurisdiction over the child has not been taken; rather, following the preliminary hearing, a petition has been authorized for filing, the child is in out-of-home placement, and specific medical procedures will be performed by medical personnel by order of the court. See Section 7.15 for a discussion of the required procedures during preliminary hearings. It should be noted that in such a case the court is not entering an order for medical or surgical care under MCL 712A.18(1)(f); MSA 27.3178(598.18)(1)(f), which is one of the dispositional options available to the court after it has taken jurisdiction over the child.

Psychological evaluations have been defined by the Court of Appeals as routine care for emotionally disturbed children in temporary custody. *In re Trowbridge*, 155 Mich App 785, 787–88 (1986). Only the minor's parent or legal guardian can consent to non-emergency elective surgery for a child in foster care. MCL 722.124a(3); MSA 25.358(24a)(3).

Although a parent's or guardian's failure to provide needed medical treatment for a child for legitimate religious reasons does not constitute "negligence" under MCL 722.634; MSA 25.248(14), of the Child Protection Law, this statute expressly does not preclude a court from ordering medical services for a child whose health requires it.*

*See Benchnote 1 for a detailed discussion of ordering medical treatment over religious objection by parents.